IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/11/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

W.A.No.99 of 2001

1. The Government of Tamil Nadu
rep. by its Commissioner & Secretary
Industries Department
Fort St. George
Chennai 600 009.

2. The Collector
The Nilgiris District.

3. The Assistant Director
Department of Geology & Mining
59, New Agraharam
Uthagamandalam. .. Appellant

-Vs-

1. Manohara Bauxite Mines
rep. by its Powerholder
T.Balakrishnan
Kotagiri, The Nilgiris.

2. The Government of India
rep. by its Secretary to
Government, Department of
Mines, Ministry of Steel & Mines
New Delhi. .. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order of His Lordship, Hon'ble Mr.Justice P.Sathasivam dated 11.9.2000 passed in W.P.No.14621 of 1998.

!For Appellants : Mr.D.Krishnakumar
Spl. Government Pleader

^For Respondents: Mr.V.N.Mohanraj
for 1st respondent
Mr.S.Manikumar
SCGSC for 2nd respondent

:JUDGMENT
(Judgment of this Court was made by P.D.DINAKARAN,J.)

The appellants are the respondents 2 to 4 in W.P.No.14621 of 1998 (hereinafter referred to as "respondents 2 to 4"), filed by the first respondent herein (hereinafter referred to as the "writ petitioner") to quash the order of the first respondent made in G.O.(D) No.264, Industries (MMD2) Department, dated 23.9.1997, refusing to renew the mining license to the petitioner to quarry Bauxite for a further period of twenty years in their patta land of a extent of 10 acres situated in Survey No.936/413/3 of Kotagiri Village, Kotagiri Taluk, the Nilgiris District.

2. Under similar facts and circumstances, a Division Bench of this Court, by judgment dated 16.9.1999 made in W.A.No.44 of 1995 directed the Government to consider the application for renewal, of course after imposing such conditions as may be necessary to subserve the interest of geology and ecology in the area, as the impugned patta lands are located in the hill area.

3. Following the said judgment dated 16.9.1999 made in W.A.No.44 of 1995, the learned Single judge, by order dated 11.9.2000 quashed the order of the second respondent in G.O.(D) No.264, Industries (MMD2) Department, dated 23.9.1997 and allowed the writ petition observing that the respondents 2 to 4 are at liberty to impose such conditions as may be necessary to subserve the interest of geology and ecology in the area and directing the respondents 2 to 4 to pass appropriate orders on the application of the writ petitioner within a period of eight weeks from the date of receipt of the copy of the order dated 11.9 .2000. Against the said order dated 11.9.2000 made in W.P.No.14621 of 1998, the State has preferred the present writ appeal.

4. Mr.D.Krishnakumar, learned Special Government Pleader appearing for the respondents 2 to 4 contends that the direction of the learned Single Judge could not be complied with automatically, without a due clearance of the Tamil Nadu Hill Areas Conservation Authority constituted by the Government under the provisions of the Tamil Nadu Town and Country Planning Act vide G.O.Ms.No.44, Planning and Development (TC IT) Department, dated 2.4.1990; and without following the instructions issued vide the letter of the Secretary to Government, Industries Department dated 2.11.2001 and that of the Director of Geology and Mining dated 16.11.2004.

5. The Government, by G.O.Ms.No.44, Planning and Development (TC IT) Department, dated 2.4.1990, taking into consideration the overall and severe deterioration in hill environment decided to create a body that would develop the hills into an ecologically acceptable and environmentally desirable area of Indian Land Mass, and accordingly, constituted the Tamil Nadu Hill Areas Development Authority, exercising the powers conferred under Section 10 of the Tamil Nadu Town and Country Planning Act, 1971.

6. In the said G.O., viz., G.O.Ms.No.44, Planning and Development (

TC IT) Department, dated 2.4.1990, the Government had also prescribed the members of the Tamil Nadu Hill Areas Conservation Authority, the purpose and their function. In Annexure-I to the said G.O., the Government has notified the list of Hill Taluks covered by the authority and in Annexure-II the functions of the Tamil Nadu Hill Areas Conservation Authority are prescribed. In Annexure-III, the activities which require prior clearance of the authority are prescribed, of course mentioning the activities which are to be banned in Annexure-IV.

7. For the issue raised in this appeal, Annexure-III, namely the activities which require prior clearance of the authority is relevant, whereunder under Clause 2(b), it is made mandatory to obtain prior clearance of the authority in the case of extraction of Minerals other than metalliferous and energy-producing minerals, such as lime stone, marble, sand, gravel, shale, salt, phosphates and potash.

8. Since, the writ petitioner seeks renewal of licence to operate quarry in his patta land of an extent of 10 acres situated in Survey No.936/413/3 of Kotagiri Village, Kotagiri Taluk, the Nilgiris District, which admittedly, falls in the notified area as mentioned in Annexure-I, namely Kotagiri Taluk, there cannot be any doubt that, notwithstanding the direction of this Court issued in the order dated 11.9.20 00 made in W.P.No.14621 of 1998 by the learned Single Judge, a prior concurrence from the authorities is also necessary to complete the procedure in accordance with law, because pursuant to G.O.Ms.No.44, Planning and Development (TC IT) Department, dated 2.4.1990, the Government vide their letter dated 2.11.2001 directed the Director of Geology and Mining as well as the District Collectors concerned to give effect to the said Government order dated 2.4.1990 in spirit and substance, pursuant to which the Director of Geology and Mining in his letter dated 16.11.2001 had also given necessary directions to the subordinates of his Department to follow the said Government order and process the applications filed seeking permit, lease, license, as the case may be, for mining in the hill areas.

9. We are, therefore, of the considered opinion that while giving effect to the order of the learned single Judge dated 11.9.2000 made in W.P.No.14621 of 1998, the respondents 2 to 4 are empowered to follow the procedure contemplated under the Act and to consider the application for renewal made by the writ petitioner independently and in accordance with law, which the authorities concerned shall do within a reasonable time, in any event within three months from the date of receipt of copy of this order.

This writ appeal is ordered accordingly. No costs.

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Internet:Yes

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